

12
United States
Circuit Court of Appeals
For the Ninth Circuit.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Plaintiffs in Error,

VS.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the
United States District Court of the
Northern District of California,
First Division.

FILED

JUL - 2 1921

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

For Plaintiff and Defendant in Error:

UNITED STATES ATTORNEY, San Francisco, Cal.

For Defendants and Plaintiffs in Error:

FRANK J. HENNESSEY, Esq., San Francisco, Cal.

UNITED STATES OF AMERICA.

District Court of the United States, Northern
District of California.
Clerk's Office.

No. 8432.

THE UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SULLIVAN.

Praecipe for Transcript of Record.

To the Clerk of said Court:

Sir: Please prepare the transcript of record upon writ of error in the above-entitled cause:

1. Information.
2. Arraignment and demurrer filed by defendants.
3. Order overruling demurrer.
4. Plea of defendant.
5. Record of trial.
6. Verdict of jury.

7. Judgment of court.
8. Motion for a new trial and in arrest of judgment.
9. Order denying same.
10. Clerk's certificate to judgment-roll.
11. Petition for writ of error on behalf of defendants.
12. Assignment of errors on behalf of defendants.
13. Citation on writ of error.
14. Return thereto.
15. Order allowing writ of error and supersedeas.
16. Supersedeas bond of defendants. [1*]
17. Bill of exceptions.
18. Clerk's certificate to transcript of record.

FRANK J. HENNESSY,
Attorney for Defendants.

[Endorsed]: Filed Jan. 19, 1921. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

(No. 8432.)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. SULLIVAN and BEN J.
KATHRINER,

Defendants.

Information.

At the March term of said court in the year of our Lord one thousand nine hundred and twenty,—

BE IT REMEMBERED that Annette Abbott Adams, United States Attorney for the Northern District of California, by and through Albert M. Hardie, Assistant United States Attorney, who for the United States in its behalf prosecutes in his own proper person, comes into court on this, the 21st day of May, 1920, and with leave of said Court first having been had and obtained, gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth, each of which your informant avers and verily believes to be true, are made certain and supported by a special affidavit made under oath, and that this information is based upon said affidavit, which said affidavit is, hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents:
THAT

JAMES F. SULLIVAN and BEN J. KATRINER hereinafter called the defendants heretofore, to wit, on the 23d day of April, 1920, at San Francisco, in the County of San Francisco, in the Southern Division [3] of the Northern District of California, after the date upon which the Eighteenth Amendment to the Constitution of the United States went into effect, did, unlawfully, wilfully and knowingly, in violation of Section 21 of Title II of the Act of October 28, 1919, known as the "National Prohibition Act, maintain a common nuisance in that they did unlawfully, wilfully and knowingly keep on the premises situated at 1123 Folsom Street certain intoxicating liquor, to wit, about one quart brandy containing one-half of one per cent or more of alcohol by volume.

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And affiant further gives the Court to understand and be informed as follows, to wit:

That the allegations hereinafter set forth each of which your informant avers and verily believes to be true are made certain and supported by a special affidavit made under oath and that this information is based upon said affidavit, which said affidavit is hereto attached and made a part hereof.

NOW, THEREFORE, your informant presents:
THAT

JAMES F. SULLIVAN and BEN J. KATRINER hereinafter called the defendant, heretofore, to wit, on the 23d day of April, 1920, at San Francisco, in the Southern Division of the Northern District of California, after the date upon which the Eighteenth Amendment to the Constitution of the United States went into effect, did then and there, in violation of Section 3 of Title II of the Act of October 28th, 1919, known as the National Prohibition Act, did, unlawfully, wilfully and knowingly have in their possession for beverage purposes, certain intoxicating liquor, to wit, about one quart brandy [4] containing one-half of one per cent or more of alcohol by volume.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

ANNETTE ABBOTT ADAMS,

United States Attorney.

ALBERT M. HARDIE,

Assistant U. S. Attorney,

Attorneys for Plaintiff. [5]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

John F. Hanley, being duly sworn, deposes and says: That on April 23d, 1920, James F. Sullivan and Ben J. Katriner at San Francisco, California,

had in their possession for beverage purposes and did maintain a common nuisance in that they kept on the premises at number 1123 Folsom Street certain intoxicating liquor, to wit, about one quart brandy containing one-half of one per cent or more of alcohol by volume, as set out in the foregoing information.

JOHN F. HANLEY.

Subscribed and sworn to before me, this 24th day
of April, 1920.

[Seal] C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern Dis-
trict of California.

[Endorsed]: Filed May 21, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [6]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Friday, the twenty-first day of May, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8432.

UNITED STATES OF AMERICA

VS.

JAMES F. SULLIVAN and BEN F.
KATHRINER,

Minutes of Court—May 21, 1921—Arraignment, etc.

On motion of A. M. Hardie, Esq., Asst. U. S. Atty., and presenting information therefor, charging James F. Sullivan and Ben F. Katriner, jointly, with a violation of the Act of October 28, 1919, the Court ordered that said information be filed and made a record of this court, that warrants issue forthwith for the arrest and appearance of said defendants and that bonds for the release of said defendants be fixed in the sum of \$500.00 each. Thereafter said defendants were present in court with attorney F. J. Hennessey, Esq., and duly arraigned upon said information, whereupon the Court ordered that this case be continued to May 25, 1920, for entry of defendants' pleas. [7]

In the District Court of the United States, in and for the Southern Division of the Northern District of California.

No. 8432.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. SULLIVAN and BENJAMIN
KATHRINER,

Defendants.

(Demurrer to Information.)

Now come the defendants and demurring to the

information on file herein, for grounds of demurrer allege:

1. That said information does not state a public offense against these defendants, or either of them.

WHEREFORE, defendants pray that said information be dismissed and they be discharged.

FRANK J. HENNESSY,
Attorney for Defendants.

[Endorsed]: Filed May 25, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [8]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 8432.

THE UNITED STATES

vs.

JAMES F. SULLIVAN et al.

(Order Overruling Demurrer.)

FRANK J. HENNESSY, Esq., Attorney for Defendants.

ANNETTE ABBOTT ADAMS, United States Attorney, and ALBERT M. HARDIE, Esq., Assistant United States Attorney, Attorneys for the United States.

ON DEMURRER TO INFORMATION.

The demurrer to the information herein is overruled.

June 21st, 1920.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jun. 21, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [9]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Saturday, the third day of July, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN. J.
KATRINER.

Minutes of Court—July 3, 1920—Pleas of Defendants, etc.

In this case the defendants were present in court with attorney, and duly arraigned upon the information filed herein, stated their true names to be as contained therein, waived formal reading thereof, and thereupon each of said defendants plead "Not Guilty" of the offense charged therein against him, which pleas the Court ordered and the

same are hereby entered. After hearing A. M. Hardie, Esq., Asst. U. S. Atty., the Court ordered that this case be continued to July 26, 1920, to be set for trial. [10]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Thursday, the twenty-third day of September, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable MAURICE T. DOOLING, Judge.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER,

Minutes of Court—September 23, 1920—Trial.

This case came on regularly this day for the trial of said defendants, who were present with attorney, Frank J. Hennessey, Esq. A. M. Hardie, Esq., Asst. U. S. Atty., was present on behalf of the United States. Upon the calling of the case, all parties answering ready for trial, the Court ordered that the same do proceed and that the jury-box be filled from the regular panel of trial jurors of this Court. Accordingly the hereinafter named persons were duly

drawn by lot, sworn, examined, accepted and sworn to try said defendants, viz.:

Alexander S. Ireland,	F. W. Gerlash,
Louis B. Gorgers,	William R. Pentz,
Andrew Armstrong,	A. W. Dollard,
Edwin R. Jackson,	E. H. Jones,
E. R. Brady.	John C. Bateman,
Benj. E. Lasky,	T. E. Flynn,

Mr. Geis made statement to the Court and jury of the nature of the case and called V. H. De Spain, J. F. Hanley, R. F. Love, J. Copestake and A. M. Hardie, each of whom was duly sworn and examined on behalf of the United States and introduced in evidence 3 bottles and contents which were filed and marked United States Exhibits No. 1, and thereupon rested case on behalf of the United States. [11]

Mr. Hennessey thereupon moved the Court for an order instructing the jury to return a verdict of Not Guilty as to each defendant herein, which motion the Court ordered and the same is hereby denied, to which order Mr. Hennessey entered an exception. Mr. Hennessey thereupon submitted case on behalf of each defendant. The case was then argued by Mr. Hennessey and Mr. Geis and submitted; whereupon the Court proceeded to instruct the jury herein, who after being so instructed retired at 4 o'clock P. M. to deliberate upon a verdict and subsequently returned into Court at 4:50 o'clock P. M., and upon being called twelve (12) jurors answered to their names, and in answer to question of Court, stated that they had agreed upon a verdict, and presented a written verdict which the Court ordered filed and re-

corded, viz.: "We, the Jury, find James F. Sullivan and Ben J. Kathriner the defendants at the bar Guilty on the first count, Not Guilty on Second Count. Wm. R. Pentz, Foreman." Thereupon the Court ordered that the jurors herein be discharged from further consideration of this case and excused from attendance upon the Court until September 24, 1920, at 10 o'clock A. M., and that E. R. Brady be excused until September 27, 1920, at 10 o'clock A. M. After hearing the respective attorneys, the Court ordered that this case be continued to September 25, 1920, for judgments. [12]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

(Verdict.)

We, the jury, find James F. Sullivan and Ben J. Katriner, the defendants at the bar, Guilty on the first count, Not Guilty on second count.

W. R. PENTZ,
Foreman.

[Endorsed]: Filed Sept. 23, 1920, at 4 o'clock and 50 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [13]

In the District Court of the United States, in and for the Southern Division of the Northern District of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Defendants.

Motion for New Trial.

Now come Benjamin Kathriner and James Sullivan, the defendants in the above-entitled cause, and by Frank J. Hennessy, their attorney, move the Court to set aside the verdict rendered herein and to grant a new trial of said cause, and for reasons therefor shows to the Court the following:

1. That the verdict in said cause is contrary to the law of the case.

2. That the verdict in said cause is not supported by any evidence in the case.

3. That the Court upon the trial of said cause admitted incompetent evidence offered by the United States of America.

4. That the Court improperly instructed the jury to defendant's prejudice.

BENJAMIN KATHRINER,
JAMES SULLIVAN,

Defendants.

By FRANK J. HENNESSY,
Attorney for Defendants.

[Endorsed]: Receipt of a copy of within motion this 25th day of September, 1920, is hereby admitted.

FRANK M. SILVA,
United States District Attorney.

Filed Sep. 25, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [14]

In the District Court of the United States, in and for the Southern Division of the Northern District of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Defendants.

Motion in Arrest of Judgment.

And now after verdict against the said defendants and before sentence, come the said defendants in their proper persons and by Frank J. Hennessy, their attorney, and move the Court here to arrest judgment herein and not pronounced sentence for the following reasons:

1. That the defendants have not nor has either of them ever been indicted by any grand jury of the offense charged in the information filed herein.

2. That the first count of the information filed herein does not charge or state facts sufficient to constitute a public offense under the laws of the United

States against these defendants or either of them.

BENJAMIN KATHRINER,
JAMES SULLIVAN,
Defendants.

By FRANK J. HENNESSY,
Attorney for Defendants.

[Endorsed]: Receipt of a copy of within motion
this 25th day of Sept. 1920, is admitted.

FRANK M. SILVA,
United States District Attorney.

Filed Sep. 25, 1920. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [15]

At a stated term of the District Court of the United
States, for the Northern District of California,
First Division, held at the courtroom thereof, in
the City and County of San Francisco, State of
California, on Saturday, the twenty-fifth day of
September, in the year of our Lord one thousand
nine hundred and twenty. Present: The Hon-
orable, MAURICE T. DOOLING, Judge.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

**Minutes of Court—September 25, 1920—Order De-
nying Motion for New Trial and Motion in
Arrest of Judgment, etc.**

This case came on regularly this day for pro-

nouncing of judgment upon said defendants, who were present in court with attorney, F. J. Hennessey, Esq. B. F. Geis, Esq., Asst. U. S. Atty., was present on behalf of the United States. Said defendants were called for judgment, and Mr. Hennessey thereupon presented and filed motions for new trial and in arrest of judgments, which motions the Court ordered denied, to which order Mr. Hennessey entered an exception. After hearing Mr. Hennessey, and no cause appearing why judgment should not be pronounced herein, the Court ordered that defendant, James F. Sullivan, for the offense of which he stands convicted herein, be imprisoned for the period of three (3) months, and that defendant, Ben J. Kathriner, for the offense of which he stands convicted herein, be imprisoned for the period of six (6) months, in the County Jail, City and County of San Francisco, State of California. Further ordered that said defendants stand committed to the custody of the U. S. Marshal to execute said judgments and that commitments issue accordingly. Mr. Hennessy thereupon presented petition for writ of error, assignment of errors, whereupon the Court ordered that said writ be allowed and citation issue, and [16] that bond for costs on appeal be and the same is hereby fixed in the sum of \$250.00, and that bonds for the release of said defendants pending determination of appeal be fixed in the sum of \$2,500.00. [17]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8432.

Convicted Viol. National Prohibition Act.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

**Judgment on Verdict of Guilty as to the First Count
of the Information.**

Ben F. Geis, Esq., Assistant United States Attorney, and the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the information filed on the 21st day of May, 1920, charging them with the crime of violating the National Prohibition Act; of their arraignment and plea of Not Guilty; of their trial and the verdict of the jury on the 23d day of September, 1920, to wit:

“We, the Jury, find James F. Sullivan and Ben J. Kathriner, the defendants at the bar, Guilty on the first count. Not Guilty on second count.

W. R. PENTZ,
Foreman.”

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied

a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment;

THAT, WHEREAS, the said James F. Sullivan and Ben J. Kathriner having been duly convicted in this court of the crime of violating the National Prohibition Act; [18]

IT IS THEREFORE ORDERED AND ADJUDGED that the said James F. Sullivan be imprisoned for the period of three (3) months and that Ben J. Kathriner be imprisoned for the period of six (6) months. Further ordered that said terms of imprisonment be executed upon the said James F. Sullivan and Ben J. Kathriner by imprisonment in the County Jail, county of San Francisco, State of California.

Judgment entered this 25th day of September, A. D. 1920.

WALTER B. MALING,
Clerk.

By C. W. Calbreath,
Deputy Clerk.

[Endorsed]: Entered in Vol. 10, Judg. and Decrees, at page 125. [19]

In the Southern Division of the United States
District Court for the Northern District of
California, First Division.

No. 8432.

UNITED STATES

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.
(Certificate of Clerk U. S. District Court to Judgment-roll.)

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 25th day of September, 1920.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [20]

In the District Court of the United States in and
for the Southern Division of the Northern District of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER,

Bill of Exceptions.

BE IT REMEMBERED that heretofore, the United States Attorney, in and for the Northern District of California, did file in the above-entitled court an information against the above-named defendants and thereafter the said defendants appeared in court and upon being called to plead to said information filed a demurrer to said information as shown by the record herein, and the said demurrer being overruled by the said court, each defendant pleaded not guilty as shown by the record herein, and the cause being at issue, the same coming on before Maurice T. Dooling, District Judge, and a jury duly empaneled, the United States being represented by Ben F. Guiss and Albert M. Hardie and the defendants being represented by Frank J. Hennessy, the following proceedings were had:

Testimony of V. H. De Spain, for the Government.

V. H. DE SPAIN, called for the United States, being sworn, testified as follows:

Mr. GEIS.—Q. Mr. De Spain, you are a prohibition agent? A. Yes.

Q. And have been for how long?

A. Since April.

Q. Do you know the defendants in this case, Mr. DeSpain? A. I do.

Q. Where were you on the 23d of April of this year? A. At 1123 Folsom Street. [21]

Q. Whose place of business is that, if you know?

A. Ben Katriner's.

(Testimony of V. H. De Spain.)

Q. One of the defendants here? A. Yes.

Q. Will you state to the Court and jury just what occurred at this place on that day?

A. Mr. Katriner conducts a soft-drink establishment, formerly a saloon, and Officer Hanley and myself entered his place about half-past twelve of the 23d, walked up to the bar and told him who we were; I, myself, jumped over the bar and the bartender was behind the bar at the time, Mr. Katriner was not in the saloon at the time.

Q. Who was his bartender, the other defendant?

A. Mr. Sullivan; and we found behind the bar a pitcher containing about a quart of jackass brandy, which we poured in some bottles and sealed up thereat the time.

Q. Was the liquor in a pitcher?

A. In a pitcher, a white pitcher.

Q. Did you at that time and place put the contents in bottles? A. We did, yes.

Q. Just look at the bottles that I now hand you; I ask you if those are the bottles and that is the liquor that was contained in the pitcher at the time you have just spoken about? A. Yes.

Q. Those are the same three bottles?

A. The same three bottles.

Q. And the same contents as was out there at that time? A. Yes.

Mr. GEIS.—We offer them for identification as U. S. Exhibit 1.

(The bottles were marked “U. S. Exhibit 1 for Identification.”)

(Testimony of V. H. De Spain.)

Q. Did you have any conversation of any kind or character with the defendants, or either of them, at that time?

A. We just told them to appear at that time, and then we returned there again at 3:30 of the same day.

[22]

Mr. HENNESSY.—I object to the conversation you just asked him if he had any conversation.

EXCEPTION No. 1.

Mr. GEIS.—Q. Did you have any conversation at 3:30? A. I did.

Q. With reference to the liquor? A. Yes.

Q. With whom did you have it?

A. In the place at 1123 Folsom the conversation was with Mr. Katriner, himself.

Q. Respecting the liquor that he had there?

A. Yes.

Q. What was it?

Mr. HENNESSY.—I object to the conversation upon the ground it is immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Note an exception,

A. Mr. Katriner says, "You can't arrest us," and Mr. Hanley says, "Why," and he said, "I am paying for protection to do this kind of business."

Mr. GEIS.—Q. Anything further?

A. He was paying two men out of the Sheriff's office.

Q. For protection for doing business?

A. To sell liquor.

(Testimony of V. H. De Spain.)

Q. Was there anything else said or done at that time respecting the liquor there?

A. They had another pitcher with liquor in it, but they beat me to it and dumped it; they had a sink full of creosote and they dumped it into it.

Mr. HENNESSY.—I object to that statement of the witness as a conclusion, that he beat him to it.

Mr. GEIS.—All right.

Q. Just state the order in which it occurred. You say they beat you to it.

A. We came into the place again, and I started to go behind the bar— [23]

Mr. HENNESSY.—Q. When was this?

A. At 3:30 of the same day, and Mr. Sullivan took the pitcher and dumped it into this creosote and then shook it out.

Mr. GEIS.—Q. At what time, if any, did Mr. Sullivan appear on the scene?

A. At the place, he was there both times; he was there all the time; he was there the first time and second time, also.

Q. They both were there, then?

The COURT.—No, he has not said so. He said that Mr. Sullivan, the bartender, was there all the time.

Mr. BEIS.—Q. Mr. Sullivan was there all the time? A. Yes.

Q. What period of the time was Katriner there?

A. He came in the first time, and he was in there the second time when we came in. The first time he was not, but he came in a few minutes afterward.

(Testimony of V. H. De Spain.)

Q. Did you have any other conversation than that which you have just related?

A. When we were taking Mr. Sullivan to lock him up, walking up Seventh Street, I said to him, "What are you getting a shot for it?" and he said, "twenty five cents."

Q. What is that?

A. I asked him what he was getting a drink for it, and he said, "twenty-five cents."

Q. Who said that? A. Mr. Sullivan.

Q. Were there any statements made by Mr. Katriner, other than you have stated or related with respect to this case?

A. Not outside of saying what I have said, no.

Cross-examination.

Mr. HENNESSY.—Q. What time did you go there first on the 23d? A. Between 12 and 12:30.

Q. Who was with you? A. Officer Hanley. [24]

Q. Was there anybody besides Mr. Sullivan in the place when you went there?

A. There were two or four men in front of the bar, and there was another man at the end of the bar, a stout man.

Q. As I understand you, Mr. Katriner was not present? A. Not when we went in.

Q. Did you see any sales of liquor made at that time?

A. There were two glasses on the bar, with strong evidence that it was the same liquor that we found is the pitcher.

Q. You say strong evidence. What do you mean?

(Testimony of V. H. De Spain.)

Did you get any of the contents of the glasses?

A. There was a little bit in the bottom of each glass, enough so that we could smell it, and the smell seemed the same as the liquor that we found in the pitcher.

Q. You don't know what the alcoholic contents of the glasses on the bar were, do you?

A. Not on the bar, but we know the alcoholic contents of the liquor that we found in the pitcher.

Q. Then you went up to the bar and you jumped over the bar? A. I did.

Q. Did you have a search-warrant?

A. No search-warrant.

Q. Did you make a search of the premises on this occasion?

A. Not much of a search, because we found the liquor behind the bar.

Q. All the liquor that you found was this small quantity of liquor in this pitcher? A. Yes.

Q. And you never saw any of that liquor in the pitcher dispensed or sold over the bar, did you?

A. No.

Q. When you returned there at 3:30, who was on the premises?

A. Mr. Sullivan was behind the bar, and Mr. Katriner was standing in front of the bar, and there were a number of other patrons [25] in the place, I don't know how many.

Q. What did Mr. Sullivan do, or what did Mr. Katriner do?

A. Mr. Katriner did not do anything.

(Testimony of V. H. De Spain.)

Q. He was outside the bar?

A. Outside the bar; he stood there.

Q. What occurred?

A. I started to go around behind the bar again and Mr. Sullivan takes this pitcher and dumps it into this sink of creosote, or sheep dip, and then shook it out.

Q. You did not get any of the contents of that pitcher? A. No.

Q. Did you see any sales of liquor made upon that occasion? A. No.

Q. Did you have a search-warrant upon the occasion of the second visit? A. No.

Mr. HENNESSY.—I guess that is all.

Redirect Examination.

Mr. GEIS.—Q. After you had placed the liquor that was in the pitcher in the bottles, what did you do with the bottles, or any of them?

A. We took one of them down and had it tested by Mr. Love.

Q. The United States Chemist?

A. Yes, and then we took the three of them and brought them up here and had them locked up upstairs.

Q. Is this building? A. Yes.

Mr. GEIS.—That is all.

Mr. HENNESSY.—That is all.

Testimony of J. F. Hanley, for the Government.

J. F. HANLEY, called for the United States, being sworn, testified as follows:

Mr. GEIS.—Q. Mr. Hanley, you are a prohibition agent of the Government? A. Yes. [26]

Q. And were such on the 23d of April, last?

A. Yes.

Q. Were you present with Officer De Spain, who just left the witness-stand, on the occasion to which he referred in his testimony? A. Yes.

Q. Where is this place of business located, if you remember?

A. 1123 Folsom Street, on the south side of the street, on the corner of Langdon Street.

Q. In this city and county, and in the State of California? A. Yes.

Q. Will you relate just briefly to the Court and jury what occurred on that occasion?

A. De Spain and I went to this place at 1123 Folsom Street, formerly a saloon, now a soft-drink establishment, and Officer De Spain went behind the bar and procured the evidence which is in those bottles there; it was in a crockery pitcher, and he brought it up to the bar and poured it into these bottles and sealed it up in my presence, and that of Mr. Sullivan.

Q. Did you again return to the place?

A. Yes, at 3:30 we returned again.

Q. Just going back a minute; was there anything said by either of the defendants to you or to Mr. De Spain respecting this liquor? A. Yes.

(Testimony of J. F. Hanley.)

Q. I mean the first time.

A. The first time; yes.

Q. What was it?

A. Mr. Katriner entered about two minutes after we were in the place, and when he came in we gave him orders to appear at the Commissioner's office the following morning at ten o'clock, and he said, "You cannot arrest me, because I am under protection from two men from the Sheriff's office for selling liquor here." He specified \$300. He mentioned their names, but I forget who they were.
[27]

Q. Did he say under protection for the sale of liquor? A. Yes.

Q. Then you returned again, did you not, in the afternoon? A. Yes, at 3:30.

Q. Who was there at that time?

A. Mr. Katriner was in front of the bar and Mr. Sullivan was behind the bar, acting in the capacity of a bartender; there were four or five patrons in the place, and at that time I saw Mr. Sullivan go after the contents of the pitcher and dump them into the drainboard, where there was creosote, and we could not get anything at all.

Q. Was this the same pitcher? A. Yes.

Q. I mean, was it the same container?

A. Why, the same kind of pitcher that time as the first one.

Q. The same kind of container?

A. Yes. We took Sullivan down, and he said on the way down, at the corner of Seventh and Fol-

(Testimony of J. F. Hanley.)

som, between Folsom and Howard—he admitted he was selling it for 25 cents a drink.

Q. The liquor that was in the pitcher?

A. Yes.

Q. Did Mr. Katriner make any statement to you with respect to the price of this liquor?

A. No, not to me.

Q. Did you observe any evidence of sale of liquor there on either the first or second occasion?

A. There were two empty glasses on the bar, and two men standing behind them when we were there.

Q. Was there anything in the glasses?

A. A little bit in each glass of the same stuff.

Q. In the bottom of each glass? A. Yes.

Cross-examination.

Mr. HENNESSY.—Q. You don't know what was in the glasses, do you, Mr. Hanley?

A. No, except by smell, the same as in the pitcher. [28]

Q. You did not taste it? A. No.

Q. Or did not take any part of it for the purpose of having it analyzed to see whether it contained more than one-half of one per cent of alcohol?

A. No.

Q. You never saw any sale of liquor made on those premises? A. No.

Q. When you first went in there, was Mr. Katriner present? A. No, he was not.

Q. Did you have a search-warrant? A. No.

Q. What did you do when you went in there?

(Testimony of J. F. Hanley.)

A. Mr. De Spain was the first to enter, and he went behind the bar.

Q. How did he get behind the bar?

A. He jumped over the bar the first time. The second time he went around the bar.

Q. You did not have a search-warrant on the second occasion, did you, either, Mr. Hanley?

A. No, it being a saloon, a public place, we did not need one.

Q. Upon the occasion of the second visit, you did not get any part of the liquor contained in the pitcher that you say Mr. Sullivan poured out?

A. We did, but it was mixed up with creosote; we did not take it to test at all.

Q. You did not have any analysis made of it?

A. No.

Q. You could not say whether it contained over one-half of one per cent of alcohol? A. No.

Mr. HENNESSY.—I guess that is all.

Redirect Examination.

Mr. GEIS.—Q. Was this place what you call a soft-drink establishment? A. Yes.

Q. Where they dispose of soft drinks?

A. It was formerly a saloon.

Q. But it was then conducted apparently as a soft-drink parlor? [29]

A. Yes; it is still open down there.

Mr. GEIS.—That is all.

Testimony of R. F. Love, for the Government.

R. F. LOVE, called for the United States, being sworn, testified as follows:

Mr. GEIS.—Q. Mr. Love, you are a Government chemist? A. Yes.

Q. You know Mr. De Spain, do you? A. Yes.

Q. Do you remember an occasion of his bringing to you a bottle containing some liquid?

A. I do.

Q. I hand you one of the bottles which I think has your initials on. Do you recognize that as a bottle that was given to you by Mr. De Spain, or did he give you more than one?

A. This is the one.

Q. That is the one? A. Yes.

Q. Did you make an analytical test of its contents? A. I did.

Q. What did you find?

A. It contains $34\frac{1}{2}$ per cent of alcohol by volume.

Q. What is that proof?

A. I could say about 69.

Q. Fit for use of beverage purposes?

A. Yes.

Q. And this you returned to Mr. De Spain afterwards, as I understand you? A. Yes.

Mr. GEIS.—That is all.

Cross-examination.

Mr. HENNESSY.—Q. How long have you been Government chemist, Mr. Love? A. Two years.

(Testimony of R. F. Love.)

Q. When was this submitted to you for analysis, do you remember?

A. I don't remember the date. It is marked on the bottle there, the date I received it, May 25.
[30]

Q. By whom was it delivered?

A. Mr. De Spain.

Q. What did you do with it after making the analysis? A. I returned it to Mr. De Spain.

Q. Personally? A. Yes.

Mr. HENNESSY.—I think that is all.

Mr. GEIS.—That is all.

Testimony of Jesse Copestake, for the Government.

JESSE COPESTAKE, called for the United States, being sworn, testified as follows:

Mr. GEIS.—Q. Mr. Copestake, you know Mr. De Spain? A. Yes.

Q. Do you remember him delivering to you a bottle of some liquor or, rather, three bottles, of which this is one? A. Yes.

Q. You have had it in your possession ever since? A. I have.

Q. Will you now say to the Court and jury that the contents of these bottles are identically the same as they were when you received it—the same contents as it has now? A. Yes.

Cross-examination.

Mr. HENNESSY.—Q. When was it delivered to you, Mr. Copestake?

A. Just after the case was brought.

(Testimony of Jesse Copestake.)

Q. Do you remember the date?

A. I recall the incident, but I don't remember the date.

Q. Where have you kept it since that time?

A. We have a room upstairs, and I am the only one that has a key to it; I kept it in there.

Q. You kept it in this room, did you?

A. Yes.

Q. With a great many other exhibits?

A. Yes.

Mr. HENNESSY.—I think that is all.

Mr. GEIS.—Now, if your Honor please, we offer the three [31] bottles in evidence.

Mr. HENNESSY.—We object to them on the ground that there was an illegal search and seizure under the Fourth Amendment to the Constitution, that is, they were taken without a search-warrant.

The COURT.—The objection is overruled.

Mr. HENNESSY.—We note an exception.

(The bottles were marked "U. S. Exhibit 1.")

Testimony of Albert Hardie, for the Government.

ALBERT HARDIE, called for the United States, being sworn, testified as follows:

Mr. GEIS.—Q. Mr. Hardie, do you remember an occasion when you met Mr. Hennessy and the defendant, Katriner, in the building, here?

A. I do.

Q. What did Mr. Katriner, in the presence of his attorney, say to you?

A. Mr. Katriner wished to make a statement to

(Testimony of Albert Hardie.)

me, and I turned to Mr. Hennessy and I said I was going to take a statement from Mr. Katriner, and invited Mr. Hennessy to my office. Mr. Hennessy left and said, "That is all right, Bert; go ahead."

Mr. HENNESSY.—When was that?

A. That was at the conclusion of the preliminary hearing, or shortly thereafter.

Mr. GEIS.—Q. Did Mr. Katriner come to you and make a statement then? A. He did.

Q. What did he say?

A. He stated that he was running the premises at 1123 Folsom Street.

Mr. HENNESSY.—I would like to interrogate the witness as to whether this was a free and voluntary statement.

Mr. GEIS.—Sure.

Mr. HENNESSY.—Q. Had you spoken to the defendants about [32] making a statement prior to this conversation outside of the Commissioner's office, Mr. Hardie?

A. No, I had not. The word came to me that he wished to make a statement.

Q. Who told you that he wished to make a statement? A. Mrs. De Wolfe.

Q. Mrs. De Wolfe?

A. Yes; Mrs. Hull, as she is generally known.

Q. The newspaper reporter?

A. Yes, the newspaper reporter for the "Examiner."

Q. Where were you when she made that statement to you?

(Testimony of Albert Hardie.)

A. I was in the hallway upstairs, on the fourth floor.

Q. What did you do?

A. I went down to the third floor.

Q. What occurred?

A. I saw Mr. Katriner, and you were there, and if I remember correctly I asked Katriner if he wished to make a statement, and he said yes, or he told me he wished to make a statement; it was free and voluntary on his part.

Q. Was I present?

A. Yes. I turned to you and stated to you that Mr. Katriner was going to make a statement to me, and invited you to my office, and you said, "No, that is all right."

Q. Where were you when you invited me to your office?

A. I was right off of the elevator on the third floor; this was just as you came of the Commissioner's office; I had been down to the Commissioner's office, and I came upstairs, and I forget whether I had gone to my office and come out into the hall, or was on my way up to my office, but at any rate I was in the hallway.

Q. Where was Katriner at the time?

A. When Katriner spoke to me?

Q. Where was he at the time you say you made the statement to me, inviting me upstairs?

A. Katriner was in the hallway on the [33] third floor; Katriner and Sullivan were together,

(Testimony of Albert Hardie.)

and you were also there, and I turned to you and spoke to you.

Q. You say you invited me up? A. Yes.

Q. What did you do then?

A. I went to the office and had a typewriter brought in.

Q. Who were present?

A. Mr. Katriner, Mr. Sullivan and Mr. Hanley and myself.

Q. Was I present at any part of those conversations? A. You were not.

Q. Did you make any offers of leniency or anything of that sort to Mr. Katriner?

A. None whatever.

Q. Did you make any inducement of any kind?

A. None whatever; I so stated to him.

Q. What did you say to him before he made the statement?

A. I advised him as to his rights, and said that in making the statement it had to be voluntary on his part, and with no offer of indictment from me whatever.

Q. Who all were present, did I understand you to say?

A. I was present, Mr. Katriner was present, Mr. Hanley was present, and Mr. Sullivan was present. Mr. Hanley did not stay until the conclusion of the statement, he left.

Q. I was not present, and took no part in it?

A. You were not present at any time.

(Testimony of Albert Hardie.)

EXCEPTION No. 2.

Mr. GEIS.—Q. Just state what he said.

A. Mr. Katriner said, “My name is Benedict Katriner. I reside at 1123 Folsom. This is a lodging-house and saloon on the corner downstairs. I lease the building and conduct the saloon.

“On Tuesday, April 20, 1920, three men by the names of Willie Wolf, Meimier and Jack Birch came to see me at the saloon [34] and invited me for a dinner at 917 Pacific Street. We all went over there in my machine from the Goldman Garage. While going over, Meimier stated that the prohibition appropriation had become exhausted, and that he and four other men, two besides Wolf and Jack Birch, had been detailed to take charge of prohibition enforcement in San Francisco. He further stated that he and his men would give me a good deal, and allow me to sell all the liquor I was able to procure for two weeks. I gave him \$150, and he states that this was not sufficient, but that if I gave them another \$150 it would be sufficient. I thereupon returned to my premises with them and they stood at my bar until I returned with the other \$150. I then gave them this additional \$150. We then again went to 917 Pacific Street and had our dinner. We then returned to my place, and Wolf and Birch quarreled all the way over because I had not given them enough money. They left a star with me.”

Mr. HENNESSY.—I object to this on the ground it is immaterial, irrelevant and incompe-

(Testimony of Albert Hardie.)

tent, and has nothing to do with the charge upon which these men are now on trial.

Mr. GEIS.—I think this is preliminary.

Mr. HENNESSY.—It was about two or three months prior.

The COURT.—The objection is overruled.

Mr. HENNESSY.—Note an exception.

A. (Continuing.) “At my saloon these men had a round of drinks in my place, of jackass brandy, for which they paid 25 cents a drink. I have conducted this saloon since the 1st of August, 1919. Mr. Sullivan is the name of my bartender. The next day these three men returned to the saloon and my bartender sold them a round of drinks of jackass brandy, which they paid for. My bartender, Sullivan, waited on them at that time. These men states that they had everything fixed and that I was perfectly [35] safe in selling for two weeks, or until further notice. This was on Wednesday, April 1st. Mr. Willie Wolf is a deputy sheriff and Meimer and Birch also exhibited stars, but I could not swear that they were officers.

Dated at San Francisco, California, April 24, 1920.

[Signed] BENEDICT KATRINER.

The above statement is correct as to sales of liquor by me.

(Signed) JAMES FRANCIS SULLIVAN.”

The witnesses are C. H. De Wolfe and Albert M. Hardie.

EXCEPTION No. 3.

Mr. HENNESSY.—I move to strike out this statement upon the ground it is immaterial, irrelevant and incompetent, and has nothing to do with the issues before the court.

The COURT.—The motion will be denied.

Mr. HENNESSY.—Exception.

Mr. GEIS.—That is all. That is our case.

EXCEPTION No. 4.

Mr. HENNESSY.—For the purpose of the record, Judge, I want to move at this time—your Honor remembers I interposed a demurrer to the information upon the ground that the information charges possession, and that the Volstead Act, in so far as it attempts to prohibit possession, is contrary to the amendment.

The COURT.—I remember.

Mr. HENNESSY.—I desire to move for a directed verdict of not guilty upon the ground that possession of liquor is not contrary to any valid laws of the country, and not in violation of the Eighteenth Amendment, and that that portion of the Volstead Act which attempts to prohibit possession of intoxicating liquor is invalid and unconstitutional.

The COURT.—The motion will be denied. [36]

Mr. HENNESSY.—Exception. The defendants rest.

(Thereupon counsel proceeded to argue the case, at the conclusion of which the following proceedings were had.)

Charge to the Jury.

The COURT (Orally).—Gentlemen, the defendants are charged in the information here in two counts, the first one being that on the 23d day of April of this year they did unlawfully, wilfully and knowingly keep on the premises situated at 1123 Folsom Street certain intoxicating liquor, to wit, about one quart of brandy; and in the second count they are charged with having the said brandy in their possession unlawfully.

I need not say to this jury that whatever the sentiment is for or against the enforcement of this prohibition law, that is a matter with which you and I are not concerned. The law is on our statute books; the amendment was adopted, the matter had been carried clear to the Supreme Court of the United States, and it has been declared to be a valid amendment, a valid law, and there is nothing on earth for the jury to do but enforce it. I do not say that for the purpose of influencing you in this case, because it is the province of the jury to pass upon the guilt or innocence of each defendant as he comes before it, but I do say that in response to the suggestion of counsel that these are trifling matters. These are not trifling matters. There are over 200 cases in this court now awaiting trial. This thing occurred on the 23d of last April and we have just got around to it. If juries are going to encourage violations of law by acquitting defendants who are guilty, we will never get through. This is the only court in this district extending

from the County of Monterey to the Oregon [37] line, and from the Pacific Ocean to Nevada, which is empowered to enforce this law, and if juries do not assist in the enforcement of the law, we will get no further.

I have no desire, nor has anyone who is connected with the Government any desire, that one who is innocent shall be convicted or that his liberty be jeopardized for a moment. It is equally true that a defendant who is proven guilty should not be acquitted. If that should happen time and time again by juries, the administration of the law falls down. I say that not to influence you in this particular case or any subsequent one, but to impress upon your mind that in dealing with these matters you are dealing with a very important subject.

Bearing upon these charges, I call your attention to the first provision of the law defining what intoxicating liquor is:

“Intoxicating liquor shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine, and in addition thereto any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, containing one-half of one percentum or more of alcohol by volume, which are fit for use for beverage purposes.” Section 21 provides that “any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept or bartered in violation of this title, and all intoxicating liquor and property kept and used in maintaining the same,

is hereby declared to be a common nuisance, and any person who maintains such a common nuisance shall be guilty of a misdemeanor, and upon conviction" shall be punished as therein provided. [38]

Now, Congress has the right to define, the legislature has the right to define what is a common nuisance. It may not agree with our definition of a common nuisance, but still it is the province of Congress to say what shall be a common nuisance. Whether a man's neighbors complain or not is absolutely immaterial in determining whether a man is guilty of maintaining a common nuisance.

The question for you to determine is, Did these men keep that liquor there? And if they kept it there, did they have a right to keep it there?

Let us inquire under what circumstances they would have the right to keep it there.

"After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the Commissioner within ten days after the date when the Eighteenth Amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquor in his possession."

The burden is upon the defendants, if they are found with liquor, to show that such possession is lawful. As they have offered no evidence in that

regard, it must be taken by the jury that they have no evidence of that character to offer.

The defendant here, as in every criminal case, are presumed to be innocent, and that presumption attaches at the beginning of the trial and continues throughout and until the jury by its verdict shall determine otherwise. The jury should [39] not so determine unless they are satisfied from the evidence in the case of the guilt of the defendants beyond a reasonable doubt.

A reasonable doubt is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say that they have an abiding conviction to a moral certainty of the truth of the charge. If you have such a reasonable doubt, of the guilt of the defendants, then it is your duty to give them the benefit of that doubt and acquit them; on the other hand, if you have no such reasonable doubt, it is equally your duty to render a verdict of guilty.

It is the law that a defendant in a criminal case is not bound to take the witness-stand and his failure or refusal or neglect to do so cannot in any manner prejudice him.

It is also the law that "whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission is a principal."

We have this situation as developed by the evidence—it is, of course, your sole province to pass

upon the facts, but the Court may call your attention to them—the defendant Katriner, from the evidence presented, was the owner or runner of these premises at the place named, which had formerly been a saloon, but which was at this time conducted as a soft-drink place. In that place, behind the bar, there was found a pitcher containing about a quart of liquor which the chemist has told us contained about $34\frac{1}{2}$ per cent of alcohol by volume, or about 69 proof. There is other evidence tending to show that the defendant Katriner declared that he had paid somebody for the [40] privilege of selling liquor, for protection. You will take all of these facts into consideration and determine whether these men had that liquor there, and if so, what they had it there for. If they had it there unlawfully, or for an unlawful purpose, for the purpose of sale, they were maintaining a common nuisance, as charged in the first count.

While, as I say, it not desired by the Court or any of its officers that men who are innocent, or about whose guilt there may be a reasonable doubt, should be convicted or that his liberty should be jeopardized, the Court and its officers are equally desirous that juries should take into consideration the seriousness of the situation, and in any instance where there is no reasonable doubt as to the guilt of the defendants they should not have any hesitation in bringing in such a verdict. You may retire.

(Thereupon the jury retired and subsequently returned into court, finding the defendants guilty on the first count and not guilty on the second.)

Thereupon the said Court continued said case to September 25, 1920, for judgment.

The said defendant hereby present the foregoing as their bill of exceptions herein and respectfully ask that the same be allowed, signed and sealed and made a part of the record in this case.

Dated this 22d day of December, 1920.

FRANK J. HENNESSY,
Attorney for Defendant. [41]

In the District Court of the United States in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

Notice of Presentation of Bill of Exceptions.

To Frank M. Silva, Esq., United States Attorney
and Ben F. Geis, Esq., and Albert M. Hardie,
Assistant United States Attorneys:

You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendants in the above-entitled cause, and the said defendants will apply to the said Court to allow said bill of exceptions and to sign and seal the same as the bill of exceptions herein.

FRANK J. HENNESSY,
Attorney for Defendants. [42]

In the District Court of the United States in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

Stipulation Re Bill of Exceptions.

IT IS HEREBY STIPULATED and agreed that
the foregoing bill of exceptions is correct and that
the same may be signed, settled, allowed and sealed
by the Court.

Dated this 17th day of January, 1921.

FRANK M. SILVA,

United States Attorney.

FRANK J. HENNESSY,

Attorney for Defendants. [43]

In the District Court of the United States in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

JAMES F. SULLIVAN and BEN J. KATRINER.

Order Settling Bill of Exceptions.

This bill of exceptions having been duly presented

to the Court within the time allowed by law and the rules of the Court and within the time extended by the Court by orders duly and regularly made, is now signed, sealed and made a part of the records in this case, and is allowed as correct.

Dated this 17th day of January, 1921.

M. T. DOOLING,
United States District Judge.

Due service and receipt of a copy of the within of presentation of bill of exceptions is hereby admitted this 17th day of January, 1921.

FRANK M. SILVA,
United States Attorney.

Due service and receipt of a copy of the within order of the Judge settling said bill of exceptions is hereby admitted this 17th day of January, 1921.

FRANK M. SILVA,
United States District Attorney.

[Endorsed]: Lodged Dec. 22, 1920. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

Filed Jan. 17, 1921. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [44]

In the District Court of the United States, in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SUL-
LIVAN,

Defendants.

Petition for Writ of Error and Supersedeas.

Now come Benjamin Kathriner and James Sullivan, defendants herein, by Frank J. Hennessy, their attorney, and say that on the 25th day of September, 1920, this Court rendered judgment herein against the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were permitted to the prejudice of the defendants, all of which will more fully appear from the assignment of errors which is filed with this petition.

Wherefore, the defendants pray that a writ of error may issue in their behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors complained of, and that a transcript of the record in this cause, duly authenticated, may be sent to the Circuit Court of Appeals aforesaid, and that these defendants be awarded a supersedeas upon said judgment and all

necessary and proper process including bail.

BENJAMIN KATHRINER,
JAMES SULLIVAN,

Defendants.

By FRANK J. HENNESSY,

- Attorney for Defendants.

[Endorsed]: Receipt of copy of within petition
this 25th day of Sept., 1920, is hereby admitted.

FRANK M. SILVA,

United States District Attorney. [45]

Filed Sep. 25, 1920. W. B. Maling, Clerk. By C.
W. Calbreath, Deputy Clerk. [46]

In the District Court of the United States, in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SUL-
LIVAN,

Defendants.

Assignment of Errors.

Benjamin Kathriner and James Sullivan, the plain-
tiffs in error in the above-entitled cause, and Frank
J. Hennessy, their attorney, in connection with their
petition for a writ of error, make the following as-
signment of errors, which they allege occurred upon
the trial of said cause:

1. The Court erred in overruling the objection made by plaintiffs in error to the question asked the witness De Spain, for the Government: "Did the defendants make any statement to you after their arrest and what statement did they make?" To which ruling the plaintiffs in error duly excepted.

2. The Court erred in overruling the plaintiffs in error objection to the question asked witness Hanley, for the Government: "What, if any, statement did the defendants make to you after their arrest? To which ruling the plaintiffs in error duly excepted.

3. The Court erred in overruling the objection of the plaintiffs in error to the admission of evidence to a certain quantity of liquor. Said objection being based upon the ground that said liquor was seized as the result of a search and seizure without any search-warrant, and without authority of law to which ruling the plaintiffs in error duly excepted.

4. The Court erred in denying the motion of the plaintiffs [47] in error for a directed verdict of not guilty upon the ground that the evidence offered did not establish the commission by the defendants of any public offense against the laws of the United States. To which ruling the plaintiffs in error duly excepted.

5. The Court erred in denying the motion of the plaintiffs in error for a directed verdict of not guilty upon the ground that the information herein does not state facts sufficient to constitute a public offense by either of said defendants. To which ruling the plaintiffs in error duly excepted.

6. The Court erred in denying the motion for a

new trial on behalf of defendants in this, that the said verdict finding the defendants guilty on the first count of said information is not supported by any evidence. To which ruling the plaintiffs in error duly excepted.

7. The Court erred in denying the motion of arrest of judgment on behalf of defendants, in this:

(a) That the said information herein does not state facts sufficient to constitute a public offense.

(b) That the said defendants were not, nor was either of them ever indicted by a Grand Jury prior to the trial of the offense charged in the information on file herein. To which ruling the defendants duly excepted.

BENJAMIN KATHRINER,
JAMES SULLIVAN,

Defendants.

By FRANK J. HENNESSY,
Attorney for Defendants. [48]

[Endorsed]: Receipt of a copy of within assignment of errors this 25th day of September, 1920, is admitted.

FRANK M. SILVA,
United States District Attorney.

Filed Sep. 25, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [49]

In the District Court of the United States, in and for
the Southern Division of the Northern District
of California.

No. 8432.

UNITED STATES OF AMERICA

vs.

BENJAMIN KATHRINER and JAMES SULLI-
VAN,

Defendants.

Order Allowing Writ of Error and Supersedeas.

The writ of error and the supersedeas herein
prayed for by Benjamin Kathriner and James Sulli-
van, the plaintiffs in error, pending the decision upon
said writ of error, are hereby allowed and the defend-
ants are admitted to bail upon the writ of error each
in the sum of \$2500.

The bond for costs of the writ of error is hereby
fixed at the sum of \$250 for each defendant.

Dated at San Francisco, California, this 25th day
of September, 1920.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Receipt of a copy of within order this
25th day of Sept., 1920, is admitted.

FRANK M. SILVA,
United States District Attorney.

Filed Sep. 25, 1920. W. B. Maling, Clerk. By C.
W. Calbreath, Deputy Clerk. [50]

Premium \$50.

8432

(Internal Revenue Documentary Stamp—50¢, Duly
Cancelled.)

**(Bond to Appear on Writ of Error—Benjamin J.
Kathriner.)**

UNITED STATES OF AMERICA.

Northern District of California,—ss.

BE IT REMEMBERED, That on this 25th day of September, in the year of our Lord one thousand nine hundred and twenty, before the undersigned, a United States Commissioner, duly appointed by the United States District Court for the Northern District of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the Courts of the United States, pursuant to the Acts of Congress, in that behalf, personally appeared Benjamin J. Kathriner 1123 Folsom St., as principal, and National Surety Company, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Two Thousand Five Hundred (\$2500) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance are such, that, whereas, an information has been presented by the United States Attorney for the Southern Division of the Northern District of California, and filed on the 21st day of May, A. D. 1920, in the Southern

Division of the United States District Court for the Northern District of California, charging the said Benjamin J. Kathriner with violation of Act October 28, 1919, National Prohibition Act committed on or about the 23d day of March, A. D. 1920, to wit, at the District and Division aforesaid, contrary to the form of the statute of the United States, in such case made and provided; [51] thereafter judgment of conviction was made and entered, sentence imposed and petition for writ of error allowed.

AND WHEREAS, the said Benjamin J. Kathriner has been required to give a recognizance, with sureties, in the sum of Two Thousand Five Hundred (\$2500) Dollars for his appearance pending appeal.

NOW, THEREFORE, if the said Benjamin J. Kathriner shall personally appear at the U. S. Circuit Court of Appeals, Ninth Circuit, and Southern Division of the United States District Court for the Northern District of California, to be holden at the courtroom of said court, in the city and county of San Francisco, on the ——— when required ——— at ten o'clock in the forenoon of that day, and afterwards whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be

void; otherwise to remain in full effect and virtue.

BENJAMIN KATHRINER. (Seal)

NATIONAL SURETY COMPANY. (Seal)

[Seal]

By C. T. HUGHES,
Its Attorney in Fact.

Acknowledged before me the day and year first
above written.

FRANCIS KRULL. (Seal)

United States Commissioner for the Northern Dis-
trict of California, at San Francisco.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [52]

Premium \$50.

8432

(50¢ Internal Revenue Documentary Stamp—Duly
Cancelled.)

**(Bond to Appear on Writ of Error—James F.
Sullivan.)**

UNITED STATES OF AMERICA.

Northern District of California,—ss.

BE IT REMEMBERED, That on this 25th day
of September, in the year of our Lord one thousand
nine hundred and twenty, before the undersigned,
a United States Commissioner, duly appointed by
the United States District Court for the Northern
District of California, to take acknowledgments of
bail and affidavits, and also to take depositions of
witnesses in civil causes depending in the courts of
the United States, pursuant to the Acts of Congress,

in that behalf, personally appeared James F. Sullivan, 349 Golden Gate Ave., S. F., as principal, and National Surety Company, as sureties, and jointly and severally acknowledged themselves to be indebted to the United States of America in the sum of Two Thousand Five Hundred (\$2,500) Dollars, separately to be levied and made out of their respective goods and chattels, lands and tenements, to the use of the said United States.

The conditions of the above recognizance are such, that, whereas, an information has been presented by the United States Attorney for the Southern Division of the Northern District of California, and filed on the 21st day of May, A. D. 1920, in the Southern Division of the United States District Court for the Northern District of California, charging the said James F. Sullivan, with violation of Act October 28, 1919 (National Prohibition Act), committed on or about the 23d day of March, A. D. 1920, to wit, at the District and Division aforesaid, contrary to the form of the statute of the United States, in such case made and provided, [53] thereafter judgment of conviction was made and entered, sentence imposed and petition for writ of error allowed;

AND WHEREAS, the said James F. Sullivan has been required to give a recognizance, with sureties, in the sum of Two Thousand Five Hundred (\$2500) Dollars for his appearance pending appeal.

NOW, THEREFORE, if the said James F. Sullivan shall personally appear at the U. S. Circuit Court of Appeals, Ninth Circuit, and Southern Divi-

sion of the United States District Court for the Northern District of California, to be holden at the courtroom of said Court, in the City and County of San Francisco, on the — when required — at ten o'clock in the forenoon of that day, and afterwards whenever or wherever he may be required to answer the said indictment and all matters and things that may be objected against him whenever the same may be prosecuted, and render himself amenable to any and all lawful orders and process in the premises, and not depart the said Court without leave first obtained, and shall appear for judgment and render himself in execution thereof, then this recognizance shall be void; otherwise to remain in full effect and virtue.

JAMES F. SULLIVAN. (Seal)

NATIONAL SURETY COMPANY. (Seal)

By C. T. HUGHES, (Seal)

Its Attorney in Fact.

Acknowledged before me the day and year first above written.

(Seal)

FRANCIS KRULL,

United States Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [54]

8432

(Bond for Costs on Writ of Error—Benjamin J. Kathriner.)

KNOW ALL MEN BY THESE PRESENTS, that we, Benjamin J. Kathriner, as principal, and

NATIONAL SURETY COMPANY, as sureties, are held and firmly bound unto UNITED STATES OF AMERICA in the full and just sum of Two Hundred Fifty (\$250) Dollars, to be paid to the said United States of America certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of September in the year of our Lord one thousand nine hundred and twenty.

WHEREAS, lately at a District Court of the United States for the Southern Division, Northern District of California, in a suit depending in said court, between United States of America, vs. Benjamin J. Kathriner, #8432, a judgment was rendered against the said Benjamin J. Kathriner, and the said Benjamin J. Kathriner having obtained from said Court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,—

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Benjamin J. Kathriner shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make this plea good, then the above obliga-

tion to be void; else to remain in full force and virtue.

BENJAMIN J. KATHRINER. (Seal)

NATIONAL SURETY COMPANY. (Seal)

(Seal)

By C. T. HUGHES,

Its Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,

United States Commissioner.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [55]

8432

**(Bond for Costs on Writ of Error—James F.
Sullivan.)**

KNOW ALL MEN BY THESE PRESENTS, that we, JAMES F. SULLIVAN, as principal, and NATIONAL SURETY COMPANY, as sureties, are held and firmly bound unto UNITED STATES OF AMERICA in the full and just sum of Two Hundred Fifty (\$250) Dollars, to be paid to the said United States of America, certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of September in the year of our Lord one thousand nine hundred and twenty.

WHEREAS, lately at a District Court of the United States for the Southern Division, Northern District of California in a suit depending in said court, between United States of America vs. James F. Sullivan, #8432, a judgment was rendered against the said James F. Sullivan, and the said James F. Sullivan having obtained from said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,—

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said James F. Sullivan shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES F. SULLIVAN, (Seal)

NATIONAL SURETY COMPANY. (Seal)

(Seal)

By C. T. HUGHES,

Its Attorney in Fact.

Acknowledged before me the day and year first above written.

[Seal]

FRANCIS KRULL,
United States Commissioner.

[Endorsed]: Filed Sep. 27, 1920. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [56]

Certificate of Clerk U. S. District Court to Transcript on Writ of Error.

I, WALTER B. MALING, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 56 pages, numbered from 1 to 56, inclusive, contain a full, true, and correct transcript of certain records and proceedings in the case of United States of America vs. James F. Sullivan and Ben J. Katriner, No. 8432, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on writ of error, and the instructions of the attorney for defendants and plaintiffs in error herein.

I further certify that the cost for preparing and certifying the foregoing transcript on writ of error is the sum of Nineteen Dollars and Sixty Cents (\$19.60), and that the same has been paid to me by the attorney for plaintiffs in error herein.

Annexed hereto are the original writ of error, with return of this Court attached thereto, and the original citation on writ of error.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 27th day of January, A. D. 1921.

[Seal]

WALTER B. MALING, Clerk.

By C. M. Taylor,

Deputy Clerk. [57]

In the District Court of the United States, in and for
the Northern District of California.

No. 8432.

BENJAMIN KATHRINER and JAMES SULLI-
VAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error (Original).

To the Honorable Judges of the District Court of the
United States for the Northern District of Cal-
ifornia, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
said District Court before you between Benjamin
Kathriner and James Sullivan, plaintiffs in error,
and the United States of America, defendant in
error, a manifest error has happened, to the
great damage of Benjamin Kathriner and James
Sullivan, plaintiffs in error, as by their complaint
appears, and it being that, if the error, if any there
hath been, should be duly corrected and full and
speedy justice done to the parties aforesaid, and in
this behalf you are hereby commanded, if judgment
be given, that then under your seal distinctly and
openly you send the record and proceedings afore-
said with all things concerning the same to the
United States Circuit Court of Appeals for the Ninth

Circuit, together with this writ, so that you have the same at the City of San Francisco, State of California, within thirty days from the date hereof in the said Circuit Court of Appeals for the Ninth Circuit to be then and there held, and the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals for the Ninth Circuit may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done. [58]

WITNESS, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 25th day of September, 1920, and in the — year of the Independence of the United States.

Allowed:

M. T. DOOLING,
United States District Judge, [59]

[Endorsed]: No. 8432. District Court of the United States in and for the Southern Division of the Northern District of California. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America. Defendants in Error. Writ of Error. Filed Sep. 25, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

Receipt of a copy of within writ of error this 25th day of Sept. 1920, is admitted.

FRANK M. SILVA,
United States District Attorney. [60]

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error:

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this writ was on the 25th day of January, A. D. 1921, duly lodged in the case in this court for within named defendant in error.

By the Court:

[Seal]

WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

By C. W. Taylor.

Deputy Clerk. [61]

In the District Court of the United States, in and
for the Northern District of California.

No. 8432.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States to the United
States of America, GREETING:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be holden at the city
of San Francisco, State of California, within
thirty days from the date hereof, pursuant to a
writ of error duly issued and now on file in the
clerk's office, in the United States District Court,
in and for the Southern Division of the Northern
District of California, wherein Benjamin Kath-
riner and James Sullivan are the plaintiffs in er-
ror and you are the defendant in error, to show
cause, if any there be, why the judgment rendered
against said plaintiffs in error, as in said writ of
error mentioned, should not be corrected, and why
speedy justice should not be done to the parties in
that behalf.

WITNESS, the Honorable MAURICE T. DOOLING, District Judge of the United States District Court, in and for the Southern Division of the Northern District of California, this 25th day of September, 1920.

M. T. DOOLING,
United States District Judge. [62]

[Endorsed]: No. 8432. District Court of the United States, in and for the Southern Division of the Northern District of California. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America, Defendants in Error. Citation to Writ of Error. Filed Sep. 25, 1920. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk.

Receipt of a copy of within citation this 25th day of Sept., 1920, is admitted.

FRANK M. SILVA,
United States District Attorney. [63]

[Endorsed]: No. 3637. United States Circuit Court of Appeals for the Ninth Circuit. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United

States District Court of the Northern District of California, First Division.

Filed January 27, 1921.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA.

**Stipulation and Order Extending Time Thirty Days
to File Record and Docket Cause (Dated October
25, 1920).**

It is hereby stipulated that defendants have thirty days from the date hereof within which to docket the record in the above-entitled action and file the same in the clerk's office of the above-entitled court.

Dated this 25th day of October, 1920.

FRANK M. SILVA,

United States District Attorney.

FRANK J. HENNESSY,

Attorney for Plaintiffs in Error.

So ordered.

Dated this 25th day of October, 1920.

M. T. DOOLING,
District Judge.

[Endorsed]: No. 3637. United States Circuit Court of Appeals, Ninth Circuit. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America. Stipulation Extending Time to Docket Record. Filed Oct. 25, 1920. F. D. Monckton, Clerk. Refiled Jan. 27, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

BENJAMIN KATHRINER and JAMES SUL-
LIVAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Stipulation and Order Extending Time Thirty Days
to File Record and Docket Cause (Dated
November 23, 1920).**

It is stipulated that plaintiffs in error have thirty days from the date hereof within which to docket the record in the above-entitled cause and file the same in the clerk's office of the above-entitled court.

Dated this 23d day of November, 1920.

FRANK M. SILVA,
United States District Attorney.

FRANK J. HENNESSY,
Attorney for Plaintiffs in Error.

So ordered.

Dated November 23, 1920.

M. T. DOOLING,
United States District Judge.

[Endorsed]: No. 3637. In the United States Circuit Court of Appeals, Ninth Circuit. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America, Defendant in Error. Stipulation and Order Extending Time to Docket Record. Filed Nov. 24, 1920. F. D. Monckton, Clerk. Re-filed Jan. 27, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA.

Stipulation and Order Enlarging Time to and Including January 21, 1921, to File Record and Docket Cause.

It is hereby stipulated that plaintiffs in error have thirty days from the date hereof within

70 *Benjamin Kathriner and James Sullivan*

which to docket the record in the above-entitled action and file the same in the clerk's office of the above-entitled court.

Dated this 22d day of December, 1920.

FRANK M. SILVA,

United States District Attorney.

FRANK J. HENNESSY,

Attorney for Plaintiffs in Error.

So ordered.

Dated this 22d day of December, 1920.

M. T. DOOLING,

District Judge.

[Endorsed]: No. 3637. In the United States Circuit Court of Appeals, in and for the Ninth Circuit. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America. Dated December 22d, 1920. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including January 21, 1921, to File Record and Docket Cause. Filed Dec. 22, 1920. F. D. Monckton, Clerk. Re-filed Jan. 27, 1921. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

BENJAMIN KATHRINER and JAMES SULLIVAN,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA.

Stipulation and Order Enlarging Time to and Including February 19, 1921, to File Record and Docket Cause.

It is hereby stipulated that plaintiffs in error have thirty days from the date hereof within which to docket the record in the above-entitled action and file the same in the clerk's office of the above-entitled court.

Dated this 20th day of January, 1921.

FRANK M. SILVA,

United States District Attorney.

FRANK J. HENNESSY,

Attorney for Plaintiffs in Error.

So ordered.

Dated this 20th day of January, 1921.

M. T. DOOLING,

District Judge.

[Endorsed]: No. 3637. In the United States Circuit Court of Appeals, in and for the Ninth Circuit. Benjamin Kathriner and James Sullivan, Plaintiffs in Error, vs. United States of America. Dated, January —, 1921. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including February 19, 1921, to File Record and Docket Cause. Filed Jan. 20, 1921. F. D. Monckton, Clerk. Re-filed Jan. 27, 1921. F. D. Monckton, Clerk.

